

Applicant(s): Nicholas Zarkades
Serial No.: 10/750,172
Filed: December 31, 2003

REMARKS

This application was examined with claims 1 through 25 subject to a withdrawal of claims 5, 7, 17 and 19 based upon a provisional election made with traverse to prosecute the invention set forth in claims 1 through 4, 6, 8 through 16, 18 and 20 through 25. Claim 2 is canceled. Claims 1 and 3 through 14 are amended. Claims 1 and 3 through 25 remain in the application.

Applicant requests reconsideration and reexamination of the above-identified application in view of the amendments made to the specification and claims. The following remarks state Applicant's bases for making this request and are organized according to the Examiner's Action by paragraph number.

Examiner's Action, Paragraph 1

Applicant agrees with the Examiner's summary of the requirement for restriction. However, Applicant respectfully continues to traverse this requirement.

Specifically, claims 1 and 14 as amended define a railroad gate with a first member and an extendible second member. In each claim the motion of the second arm is induced by gravity with the second member extending when an extension axis slopes downwardly from a base unit. The second member retracts into the first hollow member when the extension axis rises above the horizontal as the railroad gate returns to an open position.

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Claims 4 and 5 define particular different implementations of this device by defining two specific embodiments of a support means. This is also true of claims 16 and 17. Claims 6 and 7 define alternative embodiments of structures for performing the function of the first and second stop elements. This is also true of claims 18 and 19.

Applicant therefore submits that if claims 1 and 14 are allowed they are generic and that the non-elected species should be included in this application and the requirement for restriction should be withdrawn.

Examiner's Action, Paragraphs 3 and 4

The Examiner rejects claims 1, 14, 15, 18 through 23 and 25 under 35 U.S.C. 102(b) as being anticipated by U. S. Publication 2002/0129552 to Burke (hereinafter "the Burke reference"). The Examiner points to a first hollow member 46 and second member 48 that is telescopically received in the first hollow member 46 and the inherent use of the associated drive components mounted in the hollow member on the second member as providing a stop function. Claim 15 defines a structure for minimizing friction. The Examiner refers to bearing means 68, 70 and 72 of the Burke reference. The Examiner refers to lights 80, 82 and 84 of the Burke reference with respect to claims 21 and 22 and the lights 80, 82 and 84 also as anticipatory of claim 23. The Examiner finally argues

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that the requirement that the members be extruded provides patentable invention.

Applicant respectfully traverses this rejection.

Applicant notes that the Burke reference matured into U. S. Patent No. 6,618,993. There is a discussion of this patent in the Background of the Invention beginning at page 3, line 22. The Burke reference essentially discloses a railroad grade crossing with a telescoping arm and motor drive. When the main part of the gate is closed, the motor is energized and extends the gate. Conversely, when it is time to raise the gate, the motor retracts the telescoping member and the gate rises to a vertical position.

Nothing in the Burke reference discloses the concept of minimal sliding friction or the concept of gravity as the propelling force for the extendible, or second, member. Therefore Applicant respectfully submits that claims 1 and 14 are novel and request the Examiner to withdraw this rejection under 35 U.S.C. 102(a). Moreover, Applicant sees nothing in the Burke reference that suggests the above-mentioned and other differences. Consequently Applicant believes that claims 1 and 14 define an invention that would not have been obvious to a person of ordinary skill in the art when Applicant made his invention.

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Examiner's Action, Paragraphs 5 and 6

The Examiner rejects claims 1 through 3, 6, 9 through 11, 13 and 14 under 35 U.S.C. 103(a) as being unpatentable over U. S. Patent No. 827,772 to Worland (hereinafter the Worland patent) in view of the Burke reference.

Applicant respectfully traverses this rejection.

The Worland patent discloses a crossing gate that rotates from an open position to a blocking position under the influence of a falling weight and under the control of magnetic latches. In an open position the weight is at a maximum height; one latch prevents the gate from rotating. On the approach of a train, the latch is released and the weight begins to fall rotating an axle and gear to drive a pinion that in turns causes a crank to lower the gate to a blocking position. When this occurs a second magnetic latch prevents further motion of the gate. The descent of the weight halts at a position of intermediate height. Through the action of the crank, subsequent release of the second magnetic latch after a train passes allows the weight to descend further causing the crank to operate and rotate the gate back to its upper position.

The Worland patent contains no description of a telescoping arm within the gate structure. Further the Worland patent does not disclose the means by which the weight is raised to its original height in order to operate when a

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subsequent train arrives. Applicant sees nothing in the Burke reference that overcomes the deficiency of the Worland patent.

Conversely, Applicant sees nothing in the Worland patent that overcomes the deficiencies of the Burke reference when compared to Applicant's invention.

There is nothing in either reference to suggest this combination. A person of ordinary skill in the art looking at the Worland patent would not consider including a telescoping structure of the Burke reference with its electric motor when in fact other than the electromagnetic latches and sensing devices there is no apparent power associated with the Worland railroad gate.

While the gate 2 of the Worland patent appears to have a slight downward slope, that appears to be a normal approach for crossing gates. However, there is nothing to suggest that a structure as claimed be provided to facilitate the extension of a telescoping member through gravity.

For the foregoing reasons, Applicant respectfully requests the Examiner to withdraw this rejection.

Examiner's Action, Paragraph 7

The Examiner rejects claims 8 and 20 under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 14 and further in view of any one of U. S. Patent No. 5,603,856 to Bischoff, U. S. Patent No. 3,852,570 to Tyler,

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U. S. Patent No. 6,194,685 to Rutherford and U. S. Patent No. 4,792,659 to Thomas. The Examiner argues that the Bischoff, Tyler, Rutherford and Thomas references render claims 8 and 20 unpatentable because they show it would have been apparent to a person of ordinary skill in the art how to implement these inventions.

Applicant respectfully traverses this rejection.

None of these references discloses a railroad gate. The Bischoff patent discloses a windshield wiper; the Tyler patent discloses a resistance heating unit; the Rutherford patent discloses a deicing apparatus; and the Thomas reference discloses a heated garage door. Applicant respectfully submits that there is nothing in any of these references that suggest their combination with either the Worland patent or the Burke reference or a combination of those even if such a combination were appropriate.

Applicant respectfully submits the use of these multiple reference in an attempt to invalidate Applicant's claims 8 and 20 is an example of inappropriate hindsight. Therefore Applicant respectfully requests the Examiner to withdraw this rejection.

Examiner's Action, Paragraph 8

The Examiner rejects claims 12 and 24 under 35 U.S.C. 103(a) as being unpatentable over the Worland patent and Burke

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reference further in view of U. S. Patent No. 494,390 to Smith.

The Examiner argues that the Smith patent discloses the use of a foot at the remote free end of a gate so as to provide support for the entire end of the gate. The Examiner further argues it would have been obvious to one skilled in the art to provide a hinge connection at the gate foot of the Worland patent in a manner similar to that taught by the Smith patent as to allow the gate to fold when not in use.

Applicant respectfully traverses this rejection.

Claim 12 depends from 1 and claim 24 depends from claim 14. Consequently if claims 1 and 14 are patentable, depending claims 12 and 24 should be patentable as claims of varying scope to which Applicant is entitled. In addition, Applicant respectfully submits that the Smith patent adds nothing to the Burke patent which describes a support leg 18 that falls by gravity into a vertical position at paragraph 26 of the Burke reference. Therefore, Applicant respectfully requests the Examiner to withdraw this rejection.

Examiner's Action, Paragraph 9

The Examiner objects to claims 4 and 16 as depending upon a rejected base claim, but indicates these two claims would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

Applicant thanks the Examiner for this indication of

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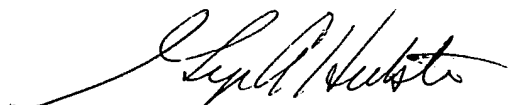
allowability. However, as Applicant's amended claims define an invention that is patentable over the cited prior art, Applicant respectfully defers rewriting claims 4 and 16 pending the allowance of earlier claims.

Summary

Applicant has canceled claim 2 and amended claims 1 and 3 through 14 to clarify the invention and particularly to distinguish over the prior art by stating that the extension and retraction of the telescoping member in Applicant's claims is through gravity. The need for motor drives or other devices as shown in the prior art is not required. Therefore Applicant respectfully submits that each of claims 1 and 3 through 25 defines an invention that is new and would not have been obvious to a person of ordinary skill in the art at the time the invention was made. Allowance of claims 1 and 3 through 25 therefore is respectfully requested.

If there are any questions, we urge the Examiner to call us collect.

Respectfully Submitted,



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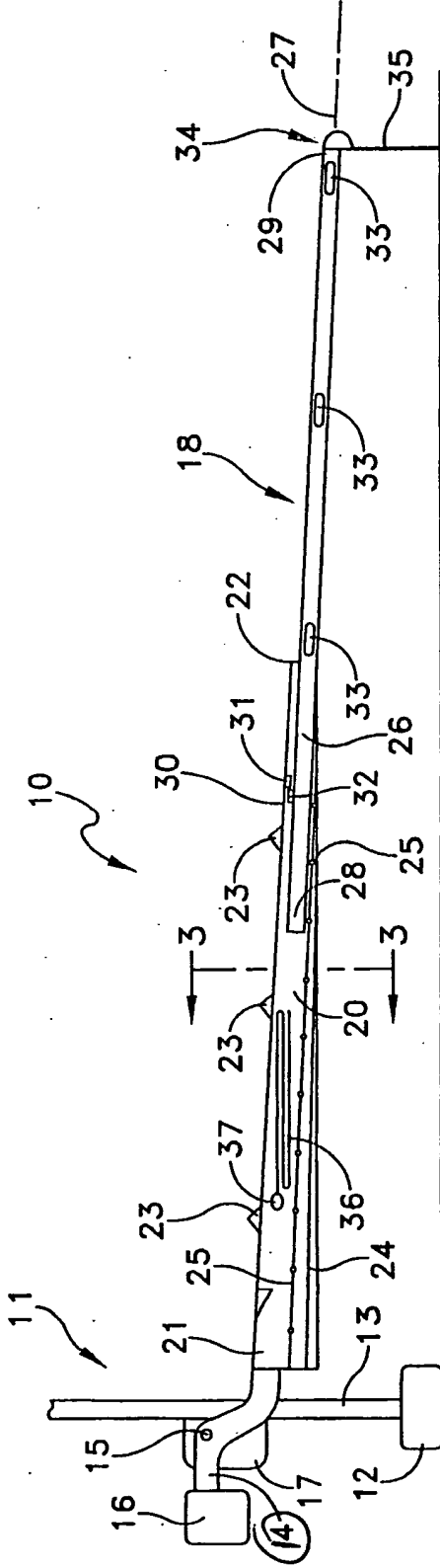


FIG. 2

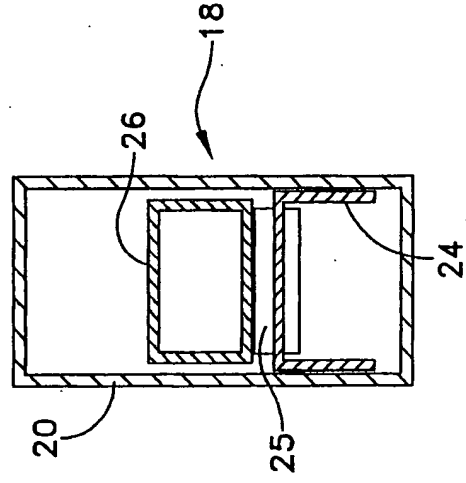


FIG. 3